

EDWARD D. MOORE
VAN MOORE
A. L. ANDERSON

IBLA 82-1119

Decided November 4, 1982

Appeal from decision by the Alaska State Office, Bureau of Land Management, approving conveyance of public lands embracing unpatented mining claims to Alaska Native Corporation pursuant to the Alaska Native Claims Settlement Act. AA-6986-A, AA-6986-C, and AA-6986-EE.

Affirmed.

1. Alaska Native Claims Settlement Act: Native Land Selections: Generally
-- Mining Claims: Determination of Validity

Owners of unpatented mining claims located within tracts conveyed to an Alaska Native Corporation pursuant to the Alaska Native Claims Settlement Act held not to be entitled to a Departmental adjudication of the validity of their claims prior to conveyance.

APPEARANCES: J. P. Tangen, Esq., for appellants; Dennis J. Hopewell, Esq., Office of Regional Solicitor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On March 1, 1979, appellants sought relief from a decision of the Alaska State Office, Bureau of Land Management (BLM), made pursuant to section 16(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 85 Stat. 688, 706, 43 U.S.C. § 1615 (1976), granting approval of a Native village selection embracing lands including appellants' unpatented mining claims. Appellants contend their claims should be excluded from selection. On March 30, 1979, by order of the Alaska Native Claims Appeal Board (ANCAB), the mining claims described in Mineral Survey No. 2190 A and B, Alaska, were segregated from lands selected for the Native village of Saxman pursuant to ANCSA, pending resolution of this appeal. On July 17, 1979, further proceedings on appeal were suspended to permit decision in the pending case later reported as Alaska Miners v. Andrus, 662 F.2d 577 (9th Cir. 1981). Prior to the court's decision in Alaska Miners, the parties agreed the court decision would probably control the disposition of this appeal (see appellants' brief filed Apr. 24, 1980; BLM brief filed July 3,

1980). Appellants now contend, however, that Alaska Miners does not bear upon the relief they seek, which is to obtain Departmental adjudication of the validity of their claim (Appellants' Response to Order to Show Cause dated Oct. 8, 1982, at 1).

ANCAB was abolished by Secretarial Order No. 5078 dated April 29, 1982, effective June 30, 1982, which transferred all responsibilities delegated ANCAB to the Interior Board of Land Appeals (IBLA). An interim rule was published June 8, 1982, enlarging IBLA's scope of authority to include appeals from decisions relating to land selections arising under ANCSA. 43 CFR 4.1(b)(3)(i); 47 FR 26340 (June 18, 1982).

Despite appellants' attempt to distinguish Alaska Miners from the pending appeal, it is apparent that the court's observation in that opinion at 662 F.2d 580 that "[the] contention that § 22(c) [of ANCSA] is a direction to the Secretary of the Interior to adjudicate the validity of all unpatented mining claims is groundless" correctly applies the law to the facts in cases involving claims such as those held by appellants. Prior Departmental precedent supports the court's stated position in this area. See United States Steel Corp., 7 ANCAB 106, 89 I.D. 293 (1982); Oregon Portland Cement Co., 6 ANCAB 65, 88 I.D. 760 (1981), construing Secretarial Order No. 3029, as amended, November 20, 1979.

Accordingly, the decision appealed from must be affirmed. Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, as amended 43 FR 26390 (June 18, 1982), the decision of the Alaska State Office, BLM, approving conveyance of lands to a Native corporation is affirmed.

Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

C. Randall Grant, Jr.
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

